

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 FALLON COUNTY

7 FINDINGS OF FACT, CONCLUSIONS OF LAW,
8 ORDER, AND MEMORANDUM OPINION

9 These informal contested case proceedings were filed before the Commissioner
10 of Political Practices (Commissioner) to consider the appeal of the principal
11 referenced above. Pursuant to the provisions of § 5-7-306, MCA, the principal
12 appealed the Commissioner's assessment of a civil penalty resulting from its late
13 filing of a lobbying disclosure report. The principal filed a written Waiver of
14 Hearing waiving its right to an in-person hearing, and submitted a written statement
15 for the Commissioner's consideration.

16 Based on the written submissions of the principal, the documents of record in the
17 Commissioner's file, and the applicable law, the Commissioner makes the following
18 findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

- 20 1. Fallon County is a principal registered with the Commissioner.
- 21 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
22 it into law. The law took effect on February 18, 2003. House Bill 38, now codified
23 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed
24 against any person who fails to file lobbying disclosure reports within the time
25 required by law.

1 3. The post-Session 2007 lobbying disclosure report for Fallon County was
2 required to be filed no later than May 29, 2007.

3 4. On May 16, 2007 the office of the Commissioner sent an email to all
4 principals, including Fallon County. The email advised principals that a post-
5 Session 2007 lobbying financial disclosure report was required to be filed by May
6 29, 2007. The email referenced the appropriate form that was required to be filed,
7 known as a form L-5A, and noted that it was available for download on the
8 Commissioner's website. Citing the provisions of § 5-7-208(4), MCA, the email
9 stated: "A report must be filed in this office even though neither lobbying nor
10 incurring of lobbying expenses may have occurred."

11 5. Fallon County failed to file its L-5A on or before May 29, 2007.

12 6. On May 30, 2007, the Commissioner sent a letter to Albert Batterman stating
13 that the post-Session L-5A report was due May 29, 2007, but had not been received.
14 The letter stated that a civil penalty started being assessed on May 30, 2007, at \$50
15 per day, and would continue until the report was filed or until the penalty amount
16 reached \$2,500. The letter urged the principal to fax the delinquent report
17 immediately, followed by a hard copy.

18 7. On May 30, 2007, the principal filed its report. Because the report was filed
19 one business day late, a \$50 civil penalty was assessed.

20 8. Fallon County requested a hearing to contest the civil penalty. The Commissioner
21 issued a Notice of Agency Action and Opportunity for Hearing on August 9, 2007.
22 Fallon County filed a written Waiver of Hearing and submitted a written statement
23 for the Commissioner's consideration.

24 9. In the written statement, Fallon County Attorney Albert Batterman asked that
25 the penalty be waived because final invoices hadn't been received from lobbyists.
26 He stated further that the matter was beyond the county's control.

27

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

Civil penalties for delays in filing -- option for hearing --

suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(c), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a legislative session,” and the report must include “all payments made during the session, except as previously reported.” If payments are not made during a reporting period, the report shall state that fact. § 5-7-208(4), MCA.

MEMORANDUM OPINION

Information offered by Fallon County Attorney Albert Batterman did not establish any factors or circumstances in mitigation that would justify reduction of the civil penalty. The filing deadlines for lobbying disclosure reports are established by statute, and cannot be extended. Further, reminders are sent – both before and after the filing deadlines.

I urge principals to carefully review and understand the statutory filing requirements to ensure that they comply with the law and to avoid the assessment of civil penalties in the future.

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2
3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that Fallon County shall pay a civil
5 penalty of \$50 to this office no later than November 28, 2007.

6 DATED this 19th day of October, 2007.

7 

8 Dennis Unsworth
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,
15 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Albert Batterman
17 Fallon County
18 10 W. Fallon Ave
19 Baker MT 59313

20 DATED: October 19th, 2007

21 
22 Mary Baker
23 Program Supervisor